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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MEGAN P., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, MARIANA L., and NAVEYA L., Appellees.	2 CA-JV 2011-0016 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19113300

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio
Tucson
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General
By Jane A. Butler
Tucson
Attorneys for Appellee
Arizona Department of
Economic Security

H O W A R D, Chief Judge.

¶1 Megan P. appeals from the juvenile court's ruling terminating her parental rights to her daughters, Naveya L., born in 2007, and Mariana L., born in 2008. Megan argues the court's termination of her parental rights was not supported by sufficient evidence. Because reasonable evidence supports the decision, we affirm.

¶2 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took custody of Naveya and Mariana in April 2009 and placed them in foster care due to the conditions in Megan and their father Jose's apartment. Those conditions included rotting food in the kitchen, choking hazards within the children's reach, and trash and dirty clothes covering the floor such that there was no clear walkway through the apartment. Although Megan denied having used illegal drugs, she agreed Naveya and Mariana should remain in foster care so she could demonstrate she was drug-free and able to maintain a safe home.

¶4 CPS inspected the apartment several times over the next month but Megan had neither cleaned it nor removed the hazards. Although Megan informed CPS late in May that she was ending her "abusive" relationship with Jose and that she had obtained a restraining order against him, she denied there was a history of domestic violence except

for a "pushing" incident that prompted her to obtain the restraining order. Jose also obtained a restraining order against Megan, preventing her from seeing him or visiting the children.

¶5 In early June, both parents changed their residences. Megan married another man and moved into his apartment, and Jose moved into his mother's home. Because Jose's mother was unable to pass a CPS or criminal background check, she could not be considered an adequate placement for the children. ADES filed a dependency petition in June 2008. Megan admitted the allegations in an amended petition and the juvenile court found the children dependent. The court required Megan to participate in parent-aide services, obtain a legal source of income, acquire a suitable home, and keep that home clean and safe.

¶6 By September 2009, Megan apparently had made substantial progress. She and her husband had rented an appropriate apartment, and she had enrolled in parenting classes and planned to enroll in a GED program. But in November, she separated from her husband and renewed her relationship with Jose, moving back in with him. However, she continued to participate actively with the continuing case plan of reunification with her children.

¶7 In April 2010, CPS discovered police officers had responded to a domestic violence incident between Megan and Jose. Megan admitted that she and Jose had several domestic violence incidents but that she had not reported them because she wanted to continue a relationship with Jose—although she also avowed she was not in a romantic relationship with him. She moved into a friend's home near Jose's home. Megan's counselor reported that Megan no longer wished to participate in couples counseling and "minimized any issues or conflict in [her] relationship" with Jose. ADES

required Megan to enroll in domestic violence/anger-management classes and, based on Jose's report that she frequently was intoxicated, to participate in random drug and alcohol testing. In May 2010, ADES recommended that the case plan goal continue to be reunification to provide time for Megan to participate in these additional services.

¶8 In June 2010, following an evaluation, a psychiatrist recommended that Megan participate in counseling and group therapy. But, because she had not consistently attended other required group therapy sessions, Megan was not permitted to meet with an individual therapist. Megan also informed ADES that she would not participate in group therapy sessions because she was planning to attend school in August. By August 2010, Megan had moved in with Jose's mother. She had not found employment since the children had been removed and, although she enrolled in classes, she did not complete any education program.

¶9 In August 2010, the juvenile court changed the case plan to severance and adoption, noting "[i]t does not appear to the Court that the children are any closer to being able to be safely returned to [Megan] today than they were eight, almost nine, months ago." ADES filed a motion to terminate Megan's parental rights based on time-in-care grounds pursuant to A.R.S § 8-533(B)(8)(a) and (c). After a contested severance hearing, the court terminated Megan's parental rights, finding sufficient evidence supported termination based on either time-in-care ground. This appeal followed.[1]

¶10 In order to terminate Megan's parental rights pursuant to § 8-533(B)(8)(c), the juvenile court had to find clear and convincing evidence that, despite ADES having provided "appropriate reunification services," Megan's daughters had been in out-of-

[1]Jose's parental rights also were terminated. He has appealed separately the juvenile court's order and is not a party to this appeal.

home placement for at least fifteen months, she had failed to remedy the circumstances causing her children to be in such placement, and there was a "substantial likelihood" she would "not be capable of exercising proper and effective parental care and control in the future." *See* A.R.S. § 8-863(B) (requiring clear and convincing evidence of statutory termination ground). Additionally, the court had to determine, by a preponderance of the evidence, that termination was in the children's best interests. *See* § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005) (that termination in child's best interests must be established by preponderance of evidence).

¶11 Megan argues there was insufficient evidence that she had failed to remedy the circumstances causing her children to be in out-of-home placement and that she would be incapable of properly parenting in the future. She does not dispute the remainder of the juvenile court's findings under subsection (B)(8)(c). Megan focuses on the court's determination that she had not resolved domestic violence issues with Jose, first contending there was insufficient evidence that a continuing domestic violence problem existed. We disagree. Although Megan claims there was only one incident of domestic violence, the record shows a pattern of domestic violence, culminating in the April 2010 incident. The exhibits presented during the termination hearing included a police report describing a domestic violence incident in 2009, which apparently prompted Megan to obtain a restraining order against Jose. Further, as we noted above, Megan also informed her case manager of altercations between her and Jose and described their relationship as "abusive."

¶12 Megan also asserts she had completed or was participating in all relevant counseling and that she did not cause delays in starting that counseling. But the record shows Megan did not participate fully in the services available to her or otherwise meet

the requirements placed on her. For example, her participation in mandatory drug and alcohol testing was inconsistent, and she twice tested positive for amphetamine and once tested positive for alcohol. Also, she informed her counselor she no longer wished to participate in couple's counseling and, according to that counselor, "minimized any issues or conflict in [her] relationship" with Jose. Although Megan eventually completed some counseling, the delays in her beginning programs after the April incident were a result of her failure to consistently attend other group therapy sessions at the facility. Save her completion of twelve "healthy relationship" and twelve "anger management" group counseling sessions, Megan identifies nothing else in the record suggesting she has resolved the domestic violence issues with Jose. Notably, Megan does not dispute the juvenile court's finding that she had concealed from ADES her ongoing relationship with Jose, further demonstrating her unwillingness to deal with the domestic violence issues arising from that relationship.

¶13 Finally, Megan asserts the juvenile court's finding that she would be unable to parent effectively in the future was unfounded because there was no testimony by a "service provider that would have been in a position to assess [her] prognosis for future ability to parent." Instead, Megan reasons, ADES only presented the testimony of her case manager, who "did not actually provide any services" and only "direct[ed] [Megan] to the services she felt would be most appropriate." But Megan cites no authority supporting her position that her case manager is somehow incompetent to testify about her ability to parent in the future. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument shall contain citation to authority); Ariz. R. P. Juv. Ct. 106(A) (Rule 13, Ariz. R. Civ. App. P., applies to juvenile appeals); *see also Cullum v. Cullum*, 215 Ariz. 352, n.5, 160 P.3d 231, 234 n.5 (App. 2007) (appellate court generally "will not consider argument posited

without authority"). The case manager had been working with Megan since 2009 and stated that she had been in contact with Megan's counselors and others who had evaluated Megan. She plainly was in a position to discuss Megan's fitness as a parent. *See generally* Ariz. R. Evid. 701.

¶14 Based on the record, the juvenile court's finding was supported by substantial evidence.[2] First, as we have explained, Megan failed to resolve the issues that caused her children to be removed despite having more than fifteen months to do so. Megan identifies nothing in the record that suggests having more time would improve her inadequate performance. Second, Megan has not found stable, sufficient living quarters. She instead currently resides with Jose's mother—who, as we noted above, was not approved for placement of the children.[3] She asserted at the hearing that she worked part-time selling ice cream for Jose's mother. She stated, however, that she had not given any receipts or proof of that employment to CPS because "[t]hey never asked," apparently ignoring that she was required to show stable employment to comply with her case plan. Further, Megan does not assert this employment will enable her to support herself, much less her two children. And, as noted above, Megan has not addressed

[2]Megan asserts, without citation of authority, that the juvenile court did not "specifically address" the likelihood she could parent effectively in the future. Although the court did not discuss that requirement expressly, it nonetheless found all the grounds for termination "have been proven by clear and convincing evidence." The court's findings related to Megan's inability to remedy the circumstances leading to her children being in out-of-home care are, of course, relevant and probative of her ability to parent in the future. And we presume a court has made all necessary findings to support its ruling. *See In re Niky R.*, 203 Ariz. 387, ¶ 21, 55 P.3d 81, 86 (App. 2002). Thus, to the extent Megan suggests the court's ruling was insufficient or incomplete, we reject that claim.

[3]Megan claimed during the hearing that Jose's mother does not live at the residence and that Megan pays her "some" rent. Even assuming the juvenile court found that testimony credible, Megan acknowledged she did not know how long she would be permitted to live there.

adequately the domestic violence issues arising from her continuing relationship with Jose.

¶15 For the reasons stated, we affirm the juvenile court's order terminating Megan's parental rights to Naveya and Mariana.[4]

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

[4]Because we affirm the juvenile court's finding that termination was warranted pursuant to § 8-533(B)(8)(c), we need not address its finding that termination was also warranted pursuant to subsection (B)(8)(a). *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (if evidence of one alleged severance ground sufficient, appellate court need not address additional grounds).